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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 FANG FANG,
12 Plaintiff,
13 vs.
14 GEAC ENTERPRISE SOLUTIONS, INC.,
15 Defendant.

Case No. C-05-00128 JCS

STIPULATED PROTECTIVE ORDER

In connection with the above captioned action, Plaintiff Fang Fang and Defendant Geac Enterprise Solutions, Inc. stipulate and petition the court to enter the following Stipulated Protective Order ("Order") in this action:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5

1 sets forth the procedures that must be followed and reflects the standards that will be applied
 2 when a party seeks permission from the court to file material under seal.

3 **2. DEFINITIONS**

4 **2.1 Party**: any party to this action, including all of its officers, directors,
 5 employees, consultants, retained experts, and outside counsel (and their support staff).

6 **2.2 Disclosure or Discovery Material**: all items or information, regardless of
 7 the medium or manner generated, stored, or maintained (including, among other things,
 8 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
 9 responses to discovery in this matter.

10 **2.3 Confidential" Information or Items**: information (regardless of how
 11 generated, stored or maintained) or tangible things that qualify for protection under standards
 12 developed under F.R.Civ.P. 26(c).

13 **2.4 Highly Confidential – Attorneys' Eyes Only" Information or Items**:
 14 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or
 15 nonparty would create a substantial risk of serious injury that could not be avoided by less
 16 restrictive means.

17 **2.5 Receiving Party**: a Party that receives Disclosure or Discovery Material
 18 from a Producing Party.

19 **2.6 Producing Party**: a Party that produces Disclosure or Discovery Material
 20 in this action.

21 **2.7 Designating Party**: a Party that designates information or items that it
 22 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential -
 23 Attorneys' Eyes Only."

24 **2.8 Protected Material**: any Disclosure or Discovery Material that is
 25 designated as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

26 **2.9 Outside Counsel**: attorneys who are not employees of a Party but who are
 27 retained to represent or advise a Party in this action.

28 **2.10 House Counsel**: attorneys who are employees of a Party.

1 **2.11 Counsel (without qualifier):** Outside Counsel and House Counsel (as
2 well as their support staffs).

3 **2.12 Expert:** a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
5 witness or as a consultant in this action. This definition includes a professional jury or trial
6 consultant retained in connection with this litigation.

7 **2.13 Professional Vendors:** persons or entities that provide litigation support
8 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
10 subcontractors.

11 **3. SCOPE**

12 The protections conferred by this Stipulation and Order cover not only Protected
13 Material (as defined above), but also any information copied or extracted therefrom, as well as all
14 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
15 presentations by parties or counsel to or in court or in other settings that might reveal Protected
16 Material.

17 **4. DURATION**

18 Even after the termination of this litigation, the confidentiality obligations imposed
19 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
20 court order otherwise directs.

21 **5. DESIGNATING PROTECTED MATERIAL**

22 **5.1 Exercise of Restraint and Care in Designating Material for Protection**

23 Each Party that designates information or items for protection under this
24 Order must take care to limit any such designation to specific material that qualifies under the
25 appropriate standards. A Designating Party must take care to designate for protection only those
26 parts of material, documents, items, or oral or written communications that qualify – so that other
27 portions of the material, documents, items, or communications for which protection is not
28 warranted are not swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 2 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
 3 unnecessarily encumber or retard the case development process, or to impose unnecessary
 4 expenses and burdens on other parties), expose the Designating Party to sanctions.

5 If it comes to a Party's attention that information or items that it designated for
 6 protection do not qualify for protection at all, or do not qualify for the level of protection initially
 7 asserted, that Party must promptly notify all other parties that it is withdrawing the mistaken
 8 designation.

9 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
 10 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
 11 ordered, material that qualifies for protection under this Order must be clearly so designated
 12 before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) **for information in documentary form** (apart from transcripts of
 15 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
 16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top
 17 of each page that contains protected material. If only a portion or portions of the material on a
 18 page qualifies for protection, the Producing Party also must clearly identify the protected
 19 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
 20 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
 21 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

22 A Party that makes original documents or materials available for inspection
 23 need not designate them for protection until after the inspecting Party has indicated which
 24 material it would like copied and produced. During the inspection and before the designation, all
 25 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
 26 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
 27 copied and produced, the Producing Party must determine which documents, or portions thereof,
 28 qualify for protection under this Order, then, before producing the specified documents, the

1 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
2 CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that contains
3 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
4 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
5 appropriate markings in the margins) and must specify, for each portion, the level of protection
6 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
7 EYES ONLY").

21 Transcript pages containing Protected Material must be separately bound
22 by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL"
23 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party
24 offering or sponsoring the witness or presenting the testimony.

25 (c) for information produced in some form other than
26 documentary, and for any other tangible items, that the Producing Party affix in a prominent
27 place on the exterior of the container or containers in which the information or item is stored the
28 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY". If

1 only portions of the information or item warrant protection, the Producing Party, to the extent
 2 practicable, shall identify the protected portions, specifying whether they qualify as
 3 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

4 **5.3 Inadvertent Failure to Designate.** If timely corrected, an inadvertent
 5 failure to designate qualified information or items as "Confidential" or "Highly Confidential –
 6 Attorneys' Eyes Only" does not, standing alone, waive the Designating Party's right to secure
 7 protection under this Order for such material. If material is appropriately designated as
 8 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" after the material was initially
 9 produced, the Receiving Party, on timely notification of the designation, must make reasonable
 10 efforts to assure that the material is treated in accordance with the provisions of this Order.

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party's
 13 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 14 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
 15 waive its right to challenge a confidentiality designation by electing not to mount a challenge
 16 promptly after the original designation is disclosed.

17 **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a
 18 Designating Party's confidentiality designation must do so in good faith and must begin the
 19 process by conferring directly with counsel for the Designating Party. In conferring, the
 20 challenging Party must explain the basis for its belief that the confidentiality designation was not
 21 proper and must give the Designating Party an opportunity to review the designated material, to
 22 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for
 23 the chosen designation. A challenging Party may proceed to the next stage of the challenge
 24 process only if it has engaged in this meet and confer process first.

25 **6.3 Judicial Intervention.** A Party that elects to press a challenge to a
 26 confidentiality designation after considering the justification offered by the Designating Party
 27 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
 28 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the

1 challenge. Each such motion must be accompanied by a competent declaration that affirms that
 2 the movant has complied with the meet and confer requirements imposed in the preceding
 3 paragraph and that sets forth with specificity the justification for the confidentiality designation
 4 that was given by the Designating Party in the meet and confer dialogue.

5 The burden of persuasion in any such challenge proceeding shall be on the
 6 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
 7 material in question the level of protection to which it is entitled under the Producing Party's
 8 designation.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
 11 disclosed or produced by another Party in connection with this case only for prosecuting,
 12 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
 13 to the categories of persons and under the conditions described in this Order. When the litigation
 14 has been terminated, a Receiving Party must comply with the provisions of section 11, below.

15 Protected Material must be stored and maintained by a Receiving Party at a
 16 location and in a secure manner that ensures that access is limited to the persons authorized under
 17 this Order.

18 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless
 19 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
 20 Party may disclose any information or item designated CONFIDENTIAL only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as
 22 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
 23 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
 24 attached hereto as Exhibit A;

25 (b) the Court and its personnel;

26 (c) court reporters, their staffs, and professional vendors to whom
 27 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
 28 Bound by Protective Order" (Exhibit A);

(d) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(e) the author of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES

ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION**

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as

1 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
 2 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
 3 and in no event more than three court days after receiving the subpoena or order. Such
 4 notification must include a copy of the subpoena or court order.

5 The Receiving Party also must immediately inform in writing the Party who
 6 caused the subpoena or order to issue in the other litigation that some or all the material covered
 7 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
 8 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
 9 that caused the subpoena or order to issue.

10 The purpose of imposing these duties is to alert the interested parties to the
 11 existence of this Protective Order and to afford the Designating Party in this case an opportunity
 12 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
 13 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
 14 of its confidential material – and nothing in these provisions should be construed as authorizing or
 15 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

16 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 18 Protected Material to any person or in any circumstance not authorized under this Stipulated
 19 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
 20 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected
 21 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
 22 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
 23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24 **10. FILING PROTECTED MATERIAL**

25 Without written permission from the Designating Party or a court order secured
 26 after appropriate notice to all interested persons, a Party may not file in the public record in this
 27 action any Protected Material. A Party that seeks to file under seal any Protected Material must
 28 comply with Civil Local Rule 79-5.

1 **11. FINAL DISPOSITION**

2 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
 3 days after the final termination of this action, each Receiving Party must return all Protected
 4 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all
 5 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
 6 the Protected Material. With permission in writing from the Designating Party, the Receiving
 7 Party may destroy some or all of the Protected Material instead of returning it. Whether the
 8 Protected Material is returned or destroyed, the Receiving Party must submit a written
 9 certification to the Producing Party (and, if not the same person or entity, to the Designating
 10 Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected
 11 Material that was returned or destroyed and that affirms that the Receiving Party has not retained
 12 any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of
 13 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
 14 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
 15 work product, even if such materials contain Protected Material. Any such archival copies that
 16 contain or constitute Protected Material remain subject to this Protective Order as set forth in
 17 Section 4, above.

18 **12. MISCELLANEOUS**

19 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any
 20 person to seek its modification by the Court in the future.

21 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this
 22 Protective Order no Party waives any right it otherwise would have to object to disclosing or
 23 producing any information or item on any ground not addressed in this Stipulated Protective
 24 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
 25 the material covered by this Protective Order.

26 ///

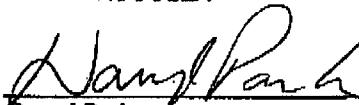
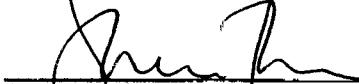
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: 9/27/05Darryl Parker
Attorney for Plaintiff Fang Fang5 DATED: 9/28/05Shannon Thorne
Attorneys for Defendant Geac Enterprise
Solutions, Inc.

8 PURSUANT TO STIPULATION, IT IS SO ORDERED.

9 DATED: September 29, 2005Magistrate Judge Joseph C. Spero
United States District Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3

4 I, _____ declare under penalty of perjury that I

5 have read in its entirety and understand the Stipulated Protective Order that was issued by the

6 United States District Court for the Northern District of California in the case of *Fang Fang v.*

7 *Geac Enterprise Solutions, Inc.*, Case No. C 05-00128 JCS. I agree to comply with and to be

8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that

9 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I

10 solemnly promise that I will not disclose in any manner any information or item that is subject to

11 this Stipulated Protective Order to any person or entity except in strict compliance with the

12 provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for

14 the Northern District of California for the purpose of enforcing the terms of this Stipulated

15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16

17 Executed this _____ day of _____, 2005/2006, at _____.

18

19 _____ Name (print)

20

21 _____ Signature

22

23 _____ Address

24

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